

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CAESARS ENTERTAINMENT CORPORATION D/B/A
RIO ALL-SUITES HOTEL AND CASINO,

CASE 28-CA-060841

AND

INTERNATIONAL UNION OF PAINTERS AND ALLIED
TRADES, DISTRICT COUNCIL 15, LOCAL 159,
AFL-CIO.

**REQUEST FOR ORAL ARGUMENT BY
INTERESTED *AMICI* MONTGOMERY BLAIR
SIBLEY**

_____/

Interested *Amici* Montgomery Blair Sibley (“Sibley”), requests ten (10) minutes to present oral argument in support of his *Amicus* brief, and for grounds in support states as follows:

The federal constitution peremptorily guarantees the right to oral argument in this instance. Accord: *Londoner v. Denver*, 210 U.S. 373 (1908)(“On the contrary, due process of law has never been a term of fixed and invariable content. This is as true with reference to oral argument as with respect to other elements of procedural due process. For this Court has held in some situations that such argument is essential to a fair hearing.”); *Federal Communications Commission v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949)(“Without in any sense discounting the value of oral argument wherever it may be appropriate or, by virtue of the particular circumstances, constitutionally required . . .” (Footnote omitted).)

The constitutional due process obligation of the Board is plain: “The one who decides must hear.” *Morgan v. United States*, 298 U.S. 468, 481 (1936). If oral argument is denied, how will Sibley know that this Board has “heard” Sibley? Upon such a federally-secured right, Sibley

asserts his right to Oral Argument in this matter as the issues raised in this matter are both first impression and seminal to the operation of the NLRB.

I. IN ITS DISCRETION THE BOARD SHOULD GRANT ORAL ARGUMENT

Four arguments compel the conclusion that in this case oral argument is necessary to the proper adjudication of this important matter and hence the Board should grant Sibley's request for oral argument.

First, oral argument allows the litigants to face the decision maker. The opportunity to physically see and interact with the government officials deciding one's case increases confidence in the system and the outcome. Oral argument provides a sense of participation in a mutual, if adversarial, endeavor that is fundamental to the common law system. It also gives to litigants the assurance that Members of the Board themselves are making the decisions, an assurance that is increasingly important in the staff-driven, bureaucratic, decision-factory that is now the administrative law system of the NLRB.

Second, oral argument provides an interactive opportunity for parties to focus the Board's collective attention on this case's most important points, to respond to the Board's issues of greatest concern, and to address issue that arise out of the consideration of the case that were not apparent during the briefing.

Third, oral interactivity greatly benefits the Board in its understanding of this case before it allowing this Board to probe issues omitted from the briefs, whether those omissions are intentional or inadvertent. Oral argument can serve an important role in clarifying the matter at hand.

Last, oral argument is, as Chief Justice Rehnquist has described it, “a three dimensional experience,” in which the litigants, counsel, and the Board engage in a public, interactive, collegial, adversarial, serious, and immediate experience that cannot be duplicated by exclusive reliance on written briefs. It is an unparalleled opportunity for litigants to face those who will decide their fate, for lawyers to make certain that their arguments are understood, and for the Board to understand the facts, legal arguments, and human dimensions of the case to be decided.

In sum, oral argument brings the entire process of argument and decision making into public view. To dispense with Oral Argument is a loss akin to teaching a law school class by reading judicial opinions aloud without discussion or questions and answers.

In this particular case, where the issues are of first impression and seminal to the significant rights that employees enjoy in the 21st Century under the 20th Century NLRA , this Board far better serves its function by not only doing justice but showing justice is being done. It is a principle “deeply rooted in the common law, that “justice must satisfy the appearance of justice.” *Levine v. U.S.*, 362 U.S. 610, 616 (1960). Here, to deny oral argument raises the specter that this Board is burying the significant issues this matter raises because of their politically inflammatory nature.

II. CONCLUSION

Oral argument is necessary to provide the Board -- the least democratic and most isolated branch of government -- with some semblance of public visibility and accountability. Without oral argument, the Members of the Board are isolated from all but a limited group of subordinates thereby imperiling the credibility of the ultimate decision in a case.

WHEREFORE, for the reasons aforesaid, Sibley respectfully requests that the Board grant his Request for Hearing.

Dated: September 6, 2018

A handwritten signature in black ink, appearing to read "M. Blair Sibley", enclosed within a thin black rectangular border.

Montgomery Blair Sibley

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by E-mail on September 6, 2018, upon:

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